

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GARY JOSEPH WIND,

Defendant-Appellee.

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UNPUBLISHED

January 5, 2010

No. 289733

Wayne Circuit Court

LC No. 08-014150-FH

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

After determining that the police stop of defendant's vehicle was illegal because it was not supported by reasonable suspicion, the circuit court granted defendant's motion to quash the information. The prosecution now appeals the court's order dismissing the charges of operating a vehicle under the influence of liquor, third offense, MCL 257.625(1) and (9), and driving with a suspended license, MCL 257.904(3)(a). We reverse and remand for reinstatement of the charges against defendant. This appeal has been decided without oral argument. MCR 7.214(E).

Officer Martin of the Wayne County Airport Authority Police testified at defendant's preliminary examination that on August 29, 2008, he observed defendant's vehicle stopped at a traffic light and followed it as it completed a turn. Defendant proceeded westbound in the left lane of travel on Eureka Road, which had two lanes for travel in that direction. Officer Martin observed the vehicle "weaving slightly between the lanes." Officer Martin explained that when a city police vehicle approached and passed defendant's vehicle in the right lane of travel, "the vehicle swerved a little bit more. And, it—he started to bob between the lanes, quite a bit, which would indicate to me that either the subject was tired or intoxicated, one of the two." Defendant "continued weaving within his lane" and Officer Martin followed the vehicle for about a quarter mile to make certain that it was not a "one time event." Defendant was not speeding or driving unusually slow. Officer Martin eventually activated his emergency lights. For approximately a quarter mile, defendant made no move to pull the vehicle to the shoulder of the road. Officer Martin then activated his siren and still saw no response from defendant. Then, defendant "darted from the left lane to the curb lane," without using a turn signal. When Officer Martin approached defendant, he noticed an odor of intoxicants and the appearance of bloodshot eyes. Also, defendant's speech was slurred. After defendant had difficulty performing field sobriety tests, Officer Martin transported him to headquarters where a breath test was performed. The Datamaster test results were .13 and .14.

Officer Martin agreed that weaving within a lane is not against the law. He also agreed that weaving within a lane could be attributable to tiredness, talking on a cell phone, or trying to retrieve a dropped item. But Officer Martin had received training in the area of alcohol investigation at the academy and he was with a training officer that evening, Officer Breezee, who Officer Martin admitted played a “heavy advisement role” during the stop.

At the conclusion of Officer Martin’s testimony, defendant argued that the stop was illegal because weaving within a lane of travel does not provide reasonable suspicion for a traffic stop. The district court disagreed and bound defendant over, explaining:

Admittedly, [the officer’s], uh, inexperience on the stand leaves his wording less than eloquent perhaps. But, [*Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 889 (1968),] says you’ve got to be able to articulate. He said he noticed Mr. Wind weaving within his lane. He thought that he could be—that could be a sign of, uh, intoxication or perhaps he was tired. And, he pulled him over to investigat[e]. I think that’s what *Terry* allows.

Defendant filed a motion to quash in the circuit court, arguing that the magistrate abused his discretion by binding him over for trial on the basis of evidence that was illegally obtained due to an unconstitutional traffic stop. He contended that the traffic stop was illegal because weaving within one’s lane of travel does not provide reasonable suspicion to stop a vehicle.

The circuit court agreed, reasoning:

In this Court’s opinion because the Defendant was weaving within a lane would indicate to this Court you can drink and not be drunk or intoxicated or impaired. I think anyone that stays with the lane even going from one side to another in their own lane, I don’t think that is reasonable suspicion to believe that a person is intoxicated or driving under the influence and he adequately stopped and did all those things as indicated by the transcript.

I think there was an Abuse of Discretion by the Magistrate and I so Find.

On appeal, the prosecutor argues that defendant’s erratic driving gave rise to a reasonable suspicion of unlawful intoxication and that the traffic stop was therefore lawful.

The circuit court’s decision granting defendant’s motion to quash was premised on its determination that the stop was illegal. The court’s application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference than its findings of fact. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). We review de novo the court’s ultimate ruling, which effectively suppressed the evidence that resulted from the stop. *Id.*

Erratic driving may give rise to a reasonable suspicion of unlawful intoxication so as to justify an investigatory stop by a police officer. *People v Christie (On Remand)*, 206 Mich App 304, 309; 520 NW2d 647 (1994). In *Christie*, a police officer followed the defendant for half a mile and observed his vehicle “drifting like to the right and left and driving on the lane markers.” *Id.* at 306. The defendant also activated his left turn signal two-tenths of a mile

before turning. *Id.* This Court concluded that the circuit court erred by concluding that the investigatory stop was unreasonable. *Id.* at 310-311.

Similarly, in *People v Hyde*, 285 Mich App 428, 436-437; \_\_\_ NW2d \_\_\_ (2009), this Court concluded that there was reasonable suspicion to stop the defendant's car where the police observed tracks on the snow-covered road where the vehicle had swerved across the road at least six times and then observed the vehicle itself traveling in the middle of the road.

Defendant cites *United States v Freeman*, 209 F3d 464 (CA 6, 2000), and *United States v Gregory*, 79 F3d 973 (CA 10, 1996), in support of his argument that the stop was illegal, but those cases each involved an isolated incident of weaving. As noted in *State v Pratt*, 182 Vt 165, 168; 932 A2d 1039 (2007) "the overwhelming weight of authority from other jurisdictions holds that repeated intra-lane weaving can create reasonable suspicion of impaired operation." In addition, although the United States Court of Appeals for the Sixth Circuit concluded in *Freeman*, *supra* at 466-467, that such conduct did not give rise to probable cause of a traffic violation or that the driver was intoxicated, the issue in the present case is whether there was reasonable suspicion to conduct an investigatory stop. See *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999).

In the present case, unlike in *Christie*, *supra* at 304, Officer Martin did not observe defendant drive on the lane markers or leave his turn signal activated for an excessive period, nor was there evidence that defendant repeatedly swerved across the road as in *Hyde*. But defendant's weaving and bobbing within the lane was not an isolated event. It worsened when a city police vehicle passed on the right, and occurred repeatedly during the quarter mile that Officer Martin observed it. The fact that defendant was able to maintain his vehicle within the lane of travel does not negate the suspicious nature of weaving from side to side. In addition, the fact that there may be innocent explanations for the conduct does not negate reasonable suspicion. *People v Oliver*, 464 Mich 184, 203-204; 627 NW2d 297 (2001). We agree with the district court that reasonable suspicion existed to justify the stop of defendant's vehicle. The circuit court erred by granting defendant's motion to quash and by dismissing the charges.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra